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W.A. Nos. 1803 and 1808 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2023

CORAM :

THE HON'BLE MR. SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVU

W.A. Nos. 1803 and 1808 of 2023

and

C.M.P. Nos. 15802 and 15837 of 2023

W.A. No. 1803 of 2023:-

K.Devaraj

-vs-

... Appellant

1. The State of Tamil Nadu
Represented by its Secretary
Department of Tourism, Culture and
Religious Endowments
Secretariat, Chennai.
2. The Commissioner
Tamil Nadu Hindu Religious and
Charitable Endowments Board
Coimbatore – 18.
3. The Joint Commissioner
Tamil Nadu Hindu Religious and
Charitable Endowments Board
Coimbatore – 18.
4. The Assistant Commissioner /



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The Executive Officer
Arulmigu Patteswarar Swami Tirukoil
Perur Village, Coimbatore Taluk & District.

5. Dhanpal

... Respondents

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 13.06.2023 passed in W.P. No. 16028 of 2023 by the learned Single Judge.

W.A. No. 1808 of 2023:-

Thangavel

... Appellant

-vs-

1. The State of Tamil Nadu
Represented by its Secretary
Department of Tourism, Culture and
Religious Endowments
Secretariat, Chennai.
2. The Commissioner
Tamil Nadu Hindu Religious and
Charitable Endowments Board
Chennai.
3. The Joint Commissioner
Tamil Nadu Hindu Religious and
Charitable Endowments Board
Coimbatore – 18.
4. The Assistant Commissioner /
The Executive Officer
Arulmigu Patteswarar Swami Tirukoil
Perur Village, Coimbatore Taluk & District.

5. Dhanpal

... Respondents

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 13.06.2023 passed in W.P. No. 16029 of 2023 by the learned Single Judge.



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For Appellant	:	Mr. G.K.Muthukumar
For RR1 to 4	:	Mr. N.R.R.Arun Natarajan Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by P.D. AUDIKESAVALU, J.)

These intra-Court appeals invoking Clause 15 of the Letters Patent, 1865, arise out of the common order dated 13.06.2023 in W.P. Nos. 16028 and 16029 of 2023 passed by the Learned Single Judge of this Court.

2. The parties are hereinafter referred as per their description in the said Writ Petitions for the sake of clarity and convenience.

3. The Petitioners were directed to be evicted from the land in Survey Nos. 184/2 and 184/3 in Perur Village and Taluk, Coimbatore District measuring an extent of 0.39.0 hectares each belonging to the Temple of the Fourth Respondent by order in M.P. No. 46 of 2013 dated 04.02.2016 passed by the Third Respondent



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under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as 'the HR&CE Act' for short). The Review Petitions in R.P. No.211 of 2016 filed by the Fifth Respondent before the Second Respondent under Section 21 of the HR&CE Act were dismissed and the First Respondent by G.O. (Ms) No.137, Tourism, Culture and Religious Endowments (RE5-2) Department dated 24.03.2023 confirmed the said order, which were assailed in the said Writ Petitions in W.P. Nos. 16028 and 16029 of 2023 before this Court.

4. The contention of the Petitioners was that they were cultivating tenants entitled to statutory protection of immunity from eviction under the provisions of the Tamil Nadu Public Trust (Regulations of Administration of Agricultural Lands) Act, 1961 (hereinafter referred to as 'the Public Trust Act' for short), which was rejected by the Writ Court by order dated 13.06.2023, against which the Petitioners have preferred the present appeals.

5. Mr. G.K.Muthukumar, Learned Counsel for the Petitioners



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relying on the decision of the Division Bench of this Court in **V.Angu**

-vs- The Commissioner Hindu Religious and Charitable

Endowment Department (Order dated 20.07.2016 in W.A.

No. 1174 of 2012) vehemently pleads that the Writ Court ought not to have rejected the claim of the Petitioners that they are 'cultivating tenants' entitled to the beneficent provisions of the Public Trust Act.

6. In response, Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader appearing for the First to Fourth Respondents, asserts that the earlier leases in favour of the service-holders in respect of the said properties of the Temple of the Fourth Respondent had been terminated after they ceased to perform their obligations, which has been upheld by the Hon'ble Supreme Court of India in the decision in **Subramania Gurukkal -vs- Patteswaraswami Devasthanam** [1993 Supp (4) SCC 519], and inasmuch as the Petitioners were claiming to have entered upon the properties as sub-lessees under those service-holders, they could not claim any better right to continue to be in occupation of the



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properties after the said leases in favour of the service-holders had come to an end, and he justifies the order of eviction passed against them, which has been concurrently upheld in all the fora below.

7. The impugned proceedings for the eviction of the Petitioners from the properties belonging to the Temple of the Fourth Respondent under Section 78 of the HR&CE Act was unsuccessfully resisted by the Petitioners on the specious plea that they are 'cultivating tenants' entitled to immunity from eviction under the beneficent provisions of the Tamil Nadu Public Trust Act. In this context, it must be highlighted that Section 14 read with Section 3(10) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 contemplates that the benefits under the Public Trust Act could be availed only on production of certified copy of entry in the approved record of tenancy rights relevant to such land. It is not the case of the Petitioners that they had produced any such certified copy of entry in the approved record of tenancy rights showing that they were 'cultivating tenants' of the lands, which admittedly belong to the Temple of the Fourth Respondent. Though Learned Counsel



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for the Petitioners contends that it was not necessary for the Petitioners to produce the said document, it is not possible to accept the same, as any unscrupulous person could illegally occupy a property without any semblance of right, title or interest and claim immunity from eviction raising the specious plea that he is a 'cultivating tenant' and defeat the valuable rights of the land owner to retrieve his property, which cannot be countenanced. Moreover, after the service-holders had ceased to perform their obligations to the Temple of the Fourth Respondent, the lease of its property in their favour came to be terminated, which was affirmed by the Hon'ble Supreme Court of India in ***Subramania Gurukkal -vs- Patteswaraswami Devasthanam*** [1993 Supp (4) SCC 519]. The Petitioners, who claimed to have entered upon the said lands as sub-lessees through the said service-holders could not thereafter claim any right in respect of those lands. In this controvertible fact situation, the only possible inference that could be drawn is that the Petitioners had to be treated as 'encroachers' of the property of the Temple of the Fourth Respondent against whom orders of eviction had been rightly passed under Section 78 of the HR & CE Act and



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confirmed by the hierarchy of authorities and the Writ Court.

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8. The ruling of the Division Bench of this Court in **V.Angu -vs- The Commissioner Hindu Religious and Charitable Endowment Department** (Order dated 20.07.2016 in W.A. No. 1174 of 2012) cannot come to the rescue of the Petitioners, in view of para 10 of that order, which reads as follows:-

"10. Here, in this case on hand, the temple authorities, without making any attempt to bring the tenancy to an end, attempted to lease out the property through public auction."

In the present case, it is not at all in dispute that the lease in favour of the service-holders has already been terminated, and consequently, the Petitioners, who claimed to be sub-lessees under them, could not, by any stretch of imagination, enjoy any right, much less as 'cultivating tenants', of those lands. This crucial distinguishing feature on facts cannot be lost sight. It must be remembered that it is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its *ratio*



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decidendi and not some conclusion based upon facts which may appear to be similar. The Hon'ble Supreme Court of India in ***Padma Sundara Rao (Dead) -vs- State of Tamil Nadu*** [(2002) 3 SCC 533] has aptly ruled in that regard as follows:-

"Courts should not place reliance on decisions without discussing as to how the factual situations fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

In such circumstances, we do not see any merit in the claim made by the Petitioners.

9. The Writ Court, in the order under appeal, has clarified that if the Petitioners are so desirous, it is left open to them to participate



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in the fresh auction for the lease of the properties by submitting their bids. Learned Counsel for the Petitioners submits that the Petitioners, who are farmers tilling the soil with their hard labour would not be in a position to afford to match the bids of the competitors to participate in such auction. In this context, it would assume significance that a lease of property belonging to a Temple could be made only for the benefit and interest of the Temple in terms of Section 34 of the HR & CE Act and it would follow as its corollary that the best possible price has to be fetched towards lease rent, and it is not possible to grant any other relief to the Petitioners in these cases.

10. The impugned orders passed by the Third, Second and First Respondents and the Writ Court, which do not suffer from any infirmity, are affirmed. If the Petitioners file an affidavit by 31.07.2023 before the Third Respondent undertaking to vacate from the lands in their occupation by 31.10.2023, the implementation of their eviction may be deferred for that period. It is needless add



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here that the Fourth Respondent is not precluded from taking further action in accordance with law in that regard immediately if such affidavit of undertaking is not filed, or if the Petitioners do not vacate from the property after the expiry of the said period in the event such affidavit is filed by them.

In the upshot, the Writ Appeals, which are devoid of merits, stand dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(S.V.G., C.J.) (P.D.A., J.)
19.07.2023

kv

Index : Yes/No

NCS : Yes/No

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